(2015) 02 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16338 of 2011 (N) and Cont. Case (C) No. 1536 of 2010 in O.P. No. 1642 of 1996

V. Parameswaran — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:
Food Corporations Act, 1964 — Section 12A, 12A(4), 12A(4)(a), 12A(4)(b)

Citation : (2015) 02 KL CK 0014

Hon'ble Judges : C.T. Ravi Kumar, J.

Bench : Single Bench

Advocate : Jacob Sebastian, for the Appellant; Nagaresh, A.S.G.I., Advocates for the Respondent

Judgement

C.T. Ravi Kumar, J.—The captioned writ petition and the contempt petition were taken up for joint hearing and disposal pursuant to the judgment of a Division Bench of this Court dated 18.7.2011 in W.A. No. 987 of 2011 arising from the order declining to grant the interim prayer in the captioned writ petition. For the sake of convenience, the petitioner in the writ petition is referred to hereafter in this judgment as ''the writ petitioner'' and the petitioner in the contempt petition is referred to as ''the petitioner''.

2. The writ petitioner was an erstwhile employee of Government of India in the Ministry of Food under the Regional Director, Southern Region, Madras. He commenced his service as a clerk in 1958. Subsequent to the formation of the Food Corporation of India (for short ''FCI'') along with certain similarly situated employees he was transferred to FCI. Two options, one under Clause (a) and the other under Clause (b), of sub-section (4) of Section 12A of the Food Corporation of India Act, 1964 (for short ''the Act'') were admissible to such transferees. For a proper understanding of the nature and impact of the said options it is relevant to refer to the said provisions which read thus:-

"S. 12A(4) Every officer or other employee transferred by an order made under

Sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed-

a) by the scale if any applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred.

b) By the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the Regulation made by the Corporation under this Act, and such option once exercised shall be final."

3. For the sake of convenience, hereafter in this judgment, the scale of pay referred to in the first part of Clause (4)(a) applicable to the transferee in the Department immediately before the transfer is referred to as ''CDA pay'' and the scale of pay applicable to the post under the Food Corporation to which he is transferred under the latter limb of Clause (4)(a) is referred to as ''IDA pay''. So also, the option for leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time, mentioned in the first limb of Clause 4(b) is referred to as ''CDA benefits'' and the option for such benefits admissible to the employees of the Food Corporation of India under the Act, referred to in the latter limb of Clause (4)(b), is referred to as ''IDA benefits''. Admittedly, after the transfer to FCI, availing the right to opt, the writ petitioner opted ''IDA pay'' and therefore, had been receiving salary in the scale of pay applicable to the post under the FCI to which he was transferred till his retirement. At the same time, availing the right to opt regarding the leave, provident fund, retirement or other terminal benefits, the writ petitioner opted the ''CDA benefits''. In other words, immediately after his transfer he opted to come over to the scale of pay applicable to the post under the FCI to which he was transferred and opted for the benefits referred to in Clause 4(b) applicable to the Central Government employees in accordance with the rules and orders of the Central Government as amended from time to time. It is to be noted in this context that there is absolutely no dispute with reference to the said options exercised by the writ petitioner.

4. The writ petitioner retired from FCI on attaining the age of superannuation while working as Assistant Grade-I on 31.1.1993. In terms of the option exercised by him under Clause (4)(b) of Section 12A of the Act his retirement benefits were fixed and payments were effected at the rates applicable to Central Government retirees under the C.C.S (Pension Rules). The writ petitioner''s pension was fixed at Rs. 1,202/- per month with effect from 1.2.1993 as per Ext. P2 authorisation. Later, his pension was revised to Rs. 1,666/- with effect from 1.2.1993 as per Ext. P3 authorisation. Along with Ext. P4 revised pension payment order Ext. P5 memo carrying certain directions was forwarded to the

writ petitioner''s Bank. In respect of the writ petitioner, as per Ext. P5, following directions were forwarded to the 6th respondent, the Manager of Canara Bank, Kalpathi Branch:-

"1) The pensioner belongs to I.D.A. category.

2) No Central Dearness Relief and Interim Relief are admissible.

3) No Central Pay Commission Revisions.

4) I.D.A. Wage Revision Commissions are set once in five years. Revision of Pension/updation should be done as per the orders of the I.D.A. wage Revision Commission.

5) I.D.A. relief on pension should be paid as per the orders of department of Public Enterprises. Copy of orders of rates of I.D.A. Relief enclosed.

6) The Central Dearness Relief, Interim Relief and 5th Pay Commission Report Revisions (if paid erroneously) should be recovered in Diff. DCRG and if the recovery exceeds Diff. DCRG, the amount should be recovered in installments from future relief.

7) The fact that IDA pensioners are not eligible for Central DR had already been communicated to the Central Pension Accounts Controllers Office, Banks and Pensioners, when the revision of pension for 1987 IDA wage revision was done during 1996-97 and 997-98. But many banks have revised the pension as given in the special seal revision letter and paid Central D.R. and I.R. and also have done the 5th P.C.R. updation.

8) The Department of Public Enterprises issued orders of relief only up to 1991 in March 6. Now in 1998, the Department of Public Enterprises has released the subsequent orders of relief from 11/91."

Realising the impact of Ext. P5 viz., his categorisation as I.D.A. pensioner and the denial of Central Dearness Relief, Interim Relief and Central Pay Commission Revision and also the consequential proposed recovery the writ petitioner approached this Court by filing O.P. No. 21954 of 1999. Prior to that certain other similarly situated persons approached this Court under similar circumstances carrying similar grievances by filing O.P. No. 1642 of 1996 and connected cases. Those cases were allowed as per Ext. P6 judgment. As per Ext. P6, the impugned orders were quashed and respondents therein were ordered to treat the petitioners therein as Central Government employees for the purpose of pension and disbursement of other retiral benefits and as regards their pension it was ordered that it should not be reduced and they should continued to be paid with allowances and timely enhancement available to Central Government retirees. Ext. P6 judgment was taken up in appeal. At that point of time, the writ petitioner challenged Ext. P5 and the consequential steps for effecting recovery by filing O.P. No. 21954 of 1999. That original petition filed by the writ petitioner was posted along with the writ appeals filed against Ext. P6 judgment. As per

Ext. P7 judgment the Division Bench dismissed the writ appeals filed against Ext. P6 judgment and allowed the original petition filed by the writ petitioner. Against Ext. P7 judgment the first respondent Union of India filed appeals before the Hon''ble Supreme Court and it is to be noted at this juncture that, in fact, no Special Leave Petition was filed against the judgment in Ext. P7 to the extent it pertains to the writ petitioner viz., judgment in O.P. No. 21954 of 1999 filed by him. As per Ext. P8 order dated 10.2.2010 in Civil Appeal Nos. 238 to 244 of 2004 the Hon''ble Apex Court dismissed the appeals with costs of Rs. 10,000/- to be awarded to each of the private respondents therein. Subsequent to Ext. P8 order, the 5th respondent re-fixed the writ petitioner''s pension with Central Dearness Relief only and at the same time, did not effect re-fixation, in other words, all other benefits of pension fixation applicable to Central Government employees in the case of the writ petitioner. The Manager under the 4th respondent as per Ext. P9 ordered to revise the writ petitioner''s pension in the aforesaid manner. Thereupon, the 5th respondent to whom Ext. P9 was issued by the 4th respondent effected re-fixation of the pension of the writ petitioner in terms of the directions in Ext. P9. As a consequence of Exts. P9 and P10, despite Ext. P7 judgment which has become final, the writ petitioner was practically continued to be treated as an IDA pensioner. As per Ext. P10, it was held that the VIth Pay Commission Revision except the Central Dearness Relief should not be allowed to the writ petitioner. The contention of the writ petitioner is that since his retirement on 31.1.1993 he has been drawing the pension on Central Government pattern viz., CDA benefits and to treat the writ petitioner as an IDA pensioner for the purpose of pension is illegal and unsustainable as it is opposed to Ext. P7 judgment. Going by the earlier fixation of his pension the writ petitioner was drawing a monthly pension of Rs. 17,419/-, as is obvious from Ext. P11. It is contended that in case of implementation of Ext. P10 his monthly pension would be reduced from Rs. 17,419/- to Rs. 15,670/-. It is further submitted that such implementation would also result in consequential recovery alleging excess payment of pension. According to the writ petitioner, in the light of Exts. P7 and P8 judgments he is entitled to get a monthly pension of Rs. 23,738/- that is, the basic pension of Rs. 15,721/- + 51% of Central Dearness Relief of Rs. 8,017/-. At the same time, as per Ext. P10, it was proposed to fix the writ petitioner''s basic pension at Rs. 10,179/- and taking into account 51% of the Dearness Relief of that basic pension it was fixed at Rs. 15,370/-. It was in the said circumstances that the writ petitioner approached this Court by filing the captioned writ petition seeking quashment of Exts. P9 and P10 and issuance of appropriate writ commanding the respondents to pay pensionary benefits based on the basic pay fixed as per Ext. P4 with effect from 1.2.1993 in accordance with the provisions contained in the Central Civil Services (Pension) Rules. The following further prayers are also sought for:-

"(iii) Declare that the petitioner is entitled to get the Central Dearness Relief, Interim Relief and the 6th pay Commission report and other benefits given to Central Government employees in accordance with the provisions contained in

Central Civil Services (Pension) Rules by the issuance of writ of mandamus or other appropriate writ, order or direction.

(iv) Issue a writ of certiorari or any other appropriate writ, order or direction commanding the respondents not to recover any amount from the petitioner and disburse the differential commuted value of pension and gratuity and also to disburse the arrears of pension due to the petitioner based on the basic pension fixed under Ext. P4 by fixing the total pension as if he retired from service as Central Government Employee."

5. A counter affidavit has been filed on behalf of respondents 1, 2, 4 and 5. A perusal of the counter affidavit would reveal that the said respondents refuted the claims and contentions of the writ petitioner and according to them, he is entitled to get monthly pension strictly in terms of Exts. P9 and P10 and therefore, Exts. P9 and P10 do not call for any interference. The statements in paragraph 3 of the counter affidavit would reveal the fact that the writ petitioner opted the scale of pay applicable to the post under the Corporation to which he was transferred in terms of Clause (a) of sub-section (4) of Section 12A of the Act and the fact that he made the option for the Central Government terminal benefits as per Clause (b) of sub-section (4) of Section 12A of the Act were not disputed by the respondents. The option thus exercised by the writ petitioner on 18.4.1977 pursuant to his transfer to FCI became final as going by Section 12A(4) of the Act such options once exercised would be final. The rival submissions would reveal the undisputed position that pursuant to his transfer to the FCI, invoking the right to opt under Clause (a) of sub- section (4) of Section 12A of the Act, the writ petitioner opted the scale of pay applicable to the post under the FCI to which he was transferred and that he opted retirement and terminal benefits applicable to the Central Government employees in accordance with the rules and orders of the Central Government, as amended from time to time, by availing the right to opt under Clause (b) of sub-section (4) of Section 12A of the Act. At the same time, the contention of the respondents is that the writ petitioner had not opted totally for the Central Government benefits. Various other contentions were also raised to resist the claims and contentions of the writ petitioner. With respect to the contention that the writ petitioner had not opted totally for the Central Government benefits I am of the considered view that the said contention cannot be a reason for denying any benefit to the writ petitioner pursuant to his option to get the retiral benefits at the rates applicable to the Central Government retirees as the writ petitioner has effected his option perfectly in tune with the provisions under Clauses (a) and (b) of sub-section (4) of Section 12A of the Act. The respondents did not dispute and, in fact, they could not dispute the availability of such options under Clauses (a) and (b) of sub-section (4) of section 12A of the Act and also of the fact that the writ petitioner had exercised such options in the manner made mention hereinbefore. As noticed hereinbefore, in the counter affidavit filed by the respondents they have raised various other contentions to resist the entitlement of the writ petitioner to be treated as a CDA pensioner for the purpose of pension, in other

words, his entitlement to get the retiral benefits at the rates applicable to a Central Government retiree. I am of the view that those contentions call for no consideration at all as the respondents are legally estopped from raising any contention to oppose the same in the light of Ext. P7 judgment which is an inter parte judgment as regards the writ petitioner and the respondents are concerned. As noticed hereinbefore, the specific contention of the writ petitioner is that as against Ext. P5 and the consequential proposed recovery he filed O.P. No. 21954 of 1999 and the said original petition was posted along with the writ appeals filed against the judgments in the original petitions which were allowed as per Ext. P6 judgment including the one in O.P. No. 1642 of 1996. The said position is incontrovertible and therefore, rightly the respondents did not dispute the said position. The fact that the writ appeals filed against Ext. P6 judgment including the one filed against O.P. No. 1642 of 1996 were dismissed and the original petition filed by the writ petitioner viz., O.P. No. 21954 of 1999 was allowed as per Ext. P7 judgment is also incontestable and very rightly the respondents did not dispute such aspects in the counter affidavit. A scanning of the contentions in the counter affidavit filed in the instant writ petition would further reveal that the specific averment of the writ petitioner that even while dismissing the writ appeals filed against Ext. P6 judgment O.P. No. 21954 of 1999 filed by him was allowed and still the respondents had not chosen to challenge the same and allowed it to become final was not met and resisted by the respondents. There is no case for the respondents that the decision in Ext. P7 judgment allowing O.P. No. 21954 of 1999 filed by the writ petitioner was successfully challenged by him. When it is the admitted position that the judgment in Ext. P7 to the extent it allowed O.P. No. 21954 of 1999 filed by the writ petitioner was not taken up further before the Hon''ble Supreme Court it can only be said that virtually the respondents have accepted the same and accordingly allowed the judgment in Ext. P7 to the extent it pertains to O.P. No. 21954 of 1999 to become final. When such an inter parte judgment between the writ petitioner and the respondents is in favour of the writ petitioner and that the respondents have allowed the same to become final they cannot canvass the same contentions which were repelled on the earlier occasion and seek for nullifying the impact and effect of the earlier judgment whereby the writ petitioner was found entitled to get the retiral benefits at the rates applicable to the Central Government retirees. The said position is strengthened by the further indisputable fact that even the Civil Appeals filed against the judgment in the writ appeals by Union of India were dismissed by the Hon''ble Apex Court as per Ext. P8 and that too, with costs to each of the private respondents. In such circumstances, the fact that Ext. P7 to the extent it dismissed the writ appeals filed against Ext. P6 judgment was taken up by the respondents unsuccessfully before the Hon''ble Apex Court cannot be a reason for the respondents to pass Exts. P9 and P10 for the purpose of treating the writ petitioner as an IDA pensioner against the directions in Ext. P7 judgment to the extent it is applicable to the writ petitioner by virtue of the judgment in O.P. No. 21954 of 1999. The respondents cannot be heard to contend that there is no binding decision in relation to the writ petitioner on the question of his entitlement as ''CDA pensioner'', to be followed. At the same time, the cumulative impact of Exts. P9 and P10 is that the writ petitioner would be treated as an IDA pensioner with the further adverse impact of reduction of his pension which was originally granted and revised from time to time in the Central Government pattern based on subsequent pay commission reports. Ext. P7 judgment would reveal that O.P. No. 21954 of 1999 filed by the writ petitioner was allowed and this Court found that the writ petitioner opted the CDA pattern and therefore, entitled to receive all benefits of Central Government employees. The contention of the respondents that the writ petitioner who opted IDA pay scales while in the service of FCI is seeking to switch over to CDA pay scale after retirement is actually a contention bereft of any basis. The writ petitioner had only exercised options strictly in tune with Clauses (a) and (b) of sub-section (4) of Section 12A of the Act, extracted above. Based on the option and the judgment in Ext. P7 the writ petitioner is entitled to get his terminal benefits including pension at the rates applicable to a Central Government retiree. Having allowed the said finding in Ext. P7 in respect of the writ petitioner to become final the respondents could not have and should not have issued Exts. P9 and P10 under the cover of their unsuccessful attempt to challenge Ext. P7 to the extent it pertains to the judgment in the writ appeals preferred against Ext. P6 judgment. In the contextual situation it will not be inapposite to refer to the clear findings of the Division Bench in Ext. P7 judgment, in relation to the rights of the writ petitioner and other petitioners whose original petitions were allowed. After extracting Section 12A(4)(a) and (b) the Division Bench held thus:-

"Admittedly the petitioners thereon opted to Central Government scheme and they had retired without receiving benefits as per Central Government pattern. The appellants herein contend that they will not get dearness reliefs as applicable to Central Government employees as at the time of retirement they were employees of Food Corporation of India. But as per Section 12A(4) in view of their option petitioners are entitled to get their terminal benefits admissible to Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They were given to right for option under clause 12A(4)(a) and (b) and they opted the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees. Therefore, there are no reasons for discriminating them. These petitioners also will be entitled to get the benefits as they are treated as Central Government employees in view of the option exercised by them. We fully agree with the decision of Karnataka High Court and learned Single Judge. In view of the above decision there is no merit in the writ appeals and are dismissed.

Accordingly the writ appeals are dismissed and the original petitions are allowed."

In the circumstances, the respondents cannot resurrect the issue and they are bound by Ext. P7 and hence, I do not think it appropriate to consider any other contentions raised by the respondents as acceptance of such contentions of the respondents, now, raised would amount to overruling the decisions of the Division Bench in Ext. P7 judgment. When faced with this situation, the learned Senior Counsel for the respondents submitted that what was actually sought to be done is only to take into account the pay lastly drawn by the writ petitioner in the IDA scale for the purpose of computing the terminal benefits under the CDA pattern. The said contention appears to be acceptable. But, it is to be noted that admittedly, based on the earlier fixation, the writ petitioner has been drawing monthly pension of Rs. 17,419/- as on 27.5.2011, as is obvious from Ext. P11. The contention of the writ petitioner is that implementation of Ext. P10 would bring it down to Rs. 15,670/-. After Ext. P7 judgment the writ petitioner has been drawing a monthly pension of Rs. 17,419/- and it cannot be reduced after pay revision and in fact, if benefit is accrued subsequently to a retiree from a Central Government Service it has to be made available to him, as well by virtue of the writ petitioner''s option under Section 12A(4)(b) of the Act. No circumstance is brought to my attention to justify a reduction of the rate of pension. Treating the writ petitioner as CDA pensioner, in the real sense to work out the benefit flowing from the option under Section 12A(4)(b) of the Act cannot have any adverse effect in the matter of payment of pension to the writ petitioner. The long and short of the discussion is that Exts. P9 and P10 to the extent they got the effect of treating the writ petitioner as an IDA pensioner and the impact of bringing down the rate of monthly pension and disentitling him the benefit based on the rules and orders issued from time to time in respect of Central Government employees are unsustainable and therefore, Exts. P9 and P10 are set aside. In such circumstances, the writ petitioner is entitled to such benefits, in terms of Ext. P7 judgment and the option exercised by him by availing Clause (b) of Sub-section (4) of Section 12A of the Act has to be given in full effect and the benefits flowing from it could not be denied or deprived, any further. Needless to say that the writ petitioner is entitled to pensionary benefits as if he retired from service as a Central Government employee and all benefits flowing from the option under Clause (b) of Section 12A(4) of the Act after proper fixation have to be given to the petitioner. Benefits, if any, payable to the writ petitioner or withheld or flowing from this judgment, shall also be disbursed to him, expeditiously, at any rate, within a period of one month from the date of receipt of copy of this judgment. The writ petition is allowed to the above extent.

6. Now, I will deal with the contempt petition viz., Cont. Case (C)No. 1536 of 2010 filed alleging disobedience with the directions in the judgment dated 14.3.2000 in O.P. No. 1642 of 1996. Admittedly, the petitioner and the writ petitioner are similarly circumstanced and originally, both of them were employees of Central Government under the Ministry of Food. Subsequent to the formation of Food Corporation of India the petitioner along with the writ petitioner and certain other employees were transferred to FCI and consequently, in terms of Clauses (a) and (b) of sub-section (4) of Section 12A of the Act the petitioner exercised option, in fact, two options as has been done by the writ

petitioner and the others. In other words, evidently, like them the petitioner also opted retirement and retirement benefits admissible to the employees in the service of Central Government. It is the subsequent proceedings treating him as IDA pensioner and the denial of the Central Dearness Relief, Interim Relief and Central Pay Commission Revision and consequential proposal to effect recovery that constrained the petitioner to approach this Court by filing O.P. No. 1642 of 1996 along with four other similarly situated persons. That writ petition was heard along with O.P. No. 22648 of 1997 and connected original petitions and Annexure-C judgment (Ext. P6 in the writ petition) was delivered thereon. The judgment in the said original petition was taken up in appeal along with the judgment in the connected cases by the respondents and it culminated in Annexure-D judgment (Ext. P7 in the writ petition). As per Annexure-E order (Ext. P8 in the writ petition) dated 10.2.2010 in Civil Appeal Nos. 238 to 244 of 2004 the Hon''ble Apex Court dismissed the appeals with costs of Rs. 10000 to be awarded to each of the private respondents. Later, Annexure-F order dated 24.9.2010 was issued. The contention of the petitioner is that in spite of Annexures C to F judgments and orders the respondents are willfully refusing to give effect to the directions in the judgments. It is with the said allegation that the captioned contempt petition has been filed. A perusal of the affidavits filed by the respondents in this case would reveal that virtually, they c adopted the same defence as has been raised in the writ petition while resisting the entitlement of the writ petitioner even while taking up the contention that they have virtually complied with the directions in the judgment in O.P. No. 1642 of 1996. I have already found in the captioned writ petition that the respondents are bound to work out the terminal benefits and pension strictly treating him as a CDA pensioner and to fix all such benefits in the same manner it is to be fixed in the case of a pensioner from Central Government Service in terms of Ext. P7 judgment which is Annexure-D in the contempt petition. In the case of the petitioner his right to get treated as ''CDA pensioner'' has been declared in Annexure-C judgment and the appeal against it was dismissed as per Annexure-D judgment. Since I have already rejected contra contentions of the respondents and granted them a month''s time for fixing such benefits and disbursing any benefits, flowing from or withholding, to the writ petitioner it will only be appropriate to defer further consideration of the contempt petition till the expiry of the aforesaid period and also to enable the respondents to comply with the directions in the case of the petitioner as well. Post the captioned contempt petition on 9.3.2015.

